IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 28, 2007

STATE OF TENNESSEE v. LARRY BRIAN SHELTON

Appeal from the Criminal Court for Hawkins County
No. CR467 James E. Beckner, Judge

No. E2006-00541-CCA-R3-CD - Filed July 26, 2007

The defendant, Larry Brian Shelton, appeals his Hawkins County Criminal Court jury convictions of first degree felony murder, *see* T.C.A. § 39-13-202(a)(2) (2006), and theft, *see id*. § 39-14-103, -105(1), and his effective sentence of life without the possibility of parole. On appeal, he claims that (1) the evidence is insufficient to support his first degree murder conviction, (2) the trial court erred in admitting some photographs of the victim's body into evidence, (3) the trial court erroneously denied the defendant's motion to suppress evidence seized from the defendant's home, (4) the trial court erroneously denied the defendant's motion to suppress his pretrial statement, and (5) the life sentence was improperly imposed without the possibility of parole. Upon our review, however, we affirm the judgments of the trial court.

Tenn. R. App. P. 3; Judgments of the Criminal Court are Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. MCLIN, JJ., joined.

Greg W. Eichelman, District Public Defender, for the Appellant, Larry Brian Shelton.

Robert E. Cooper, Jr., Attorney General & Reporter; Renee W. Turner, Assistant Attorney General; C. Berkeley Bell, Jr., District Attorney General; and Douglas Godbee, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

On March 31, 2004, the body of the victim, Frank Leake, was found lying on the floor of his home on Highway 11W in Hawkins County. A person who worked in a store nearby described a car to the police that had recently left the Leake residence. A Hawkins County officer believed the car was the defendant's. The officer was acquainted with the defendant and went to the defendant's home on Dogwood Lane. The defendant agreed to accompany the officer to the sheriff's department, where he gave a written statement and signed a form consenting to the search of his residence.

The defendant's pretrial statement expressed that the defendant's mother, who experienced pain from an injury, needed pain medication, and the defendant drove her to the home of the victim, from whom the defendant had previously purchased pills. The defendant's mother remained in the vehicle while the defendant went into the house and asked the victim for "hydros." When the victim demanded seven dollars for the pills, the defendant replied that he had only two dollars and asked the victim to sell him the "hydros" on credit for five dollars. The victim refused and, instead, sold the defendant a Valium pill for the two dollars. The defendant took the Valium but became upset that the victim would not sell the "hydros" on credit. The defendant then accused the victim of cheating the defendant's mother and again became upset when the victim replied by saying derogatory things about the defendant's mother. The defendant said that the victim started to come out of his recliner chair and placed his hand in his pocket. Thinking that the victim had a weapon, the defendant kicked the victim, who fell onto the floor. The pair then "scuffled" on the floor, and the defendant began striking the victim with a candleholder that the scuffling men had knocked off a table. At one point, when the defendant was on top of the victim on the floor, the defendant removed items from the victim's pockets, including a billfold, keys, and a knife. The defendant admitted that he opened the knife, "poked" the victim with it two or three times in the shoulder and neck, and asked him how it felt. The victim told the defendant that he had money in his safe and that the defendant could have it if he would release the victim. Then, the statement recites, "Tony" came into the house and said he would hold the victim for the defendant. Tony held the victim down while the defendant went into a bedroom to obtain the victim's safe. When the defendant returned to the room where the other two men were, he noticed that the victim had bled "more on his face and back." The defendant collected the knife, the billfold, the safe, two baskets containing a number of pill bottles, a cellular telephone, the candleholder, and a staple gun. He placed these items in his car and drove home.

After signing the written statement, the defendant signed a form consenting to a search of his residence. He accompanied the officers to the residence and pointed out the items he had taken from the victim's house.

The State offered evidence at trial that showed that many of the pill bottles found in the defendant's home bore either the name of the victim or the victim's wife as the dispensee. Further, laboratory analysis demonstrated that the victim's blood was found on the staple gun, the knife found in the defendant's home, and the trousers worn by the defendant when the officers arrived at his home shortly after the homicide.

Medical evidence established that the victim had sustained contusions about his face and neck and had been stabbed 15 times, the wounds appearing in the victim's neck, chest, abdomen, and back. Stab wounds that entered through the victim's back punctured his lungs and caused the victim to bleed profusely in the chest cavity. Also, a puncture of the liver caused internal bleeding, and a stab wound to the victim's neck opened the external jugular vein. The victim died from loss of blood. The doctor who performed the autopsy on the victim's body opined that the knife that was recovered from the defendant's home would be "capable" of producing the stab wounds, and the candleholder or staple gun would be likewise "capable" of producing the blunt force injuries to the

victim's face. The physician also testified that the victim had suffered from emphysema and heart disease and had previously received multiple-artery by-pass surgery.

The defendant's trial testimony essentially tracked his pretrial statement, which had been read into evidence. In his testimony, the defendant added that he was 45 years old, left school in the ninth grade, and had been on "disability" as a result of a "nervous disorder." His mother, who lived with him, had suffered a fall and a stroke in 1998. On March 31, 2004, she was in pain and needed pain medication, but her personal physician had committed suicide. The defendant opted to turn to the victim as a source of pain pills.

The defendant testified that the victim and his wife had caused the defendant and his mother to believe that they wanted to help the defendant and his mother, and to that end, the defendant's mother had formally appointed the victim her attorney-in-fact. The defendant believed, however, that the victim had used the power of attorney to defraud and steal from the Sheltons. He testified, "Yeah, they helped take away more than they added on to us." The defendant testified that, when he mentioned these complaints to the victim on March 31, the victim "cussed" him and his mother and started to "spring from his chair." The defendant testified that, after he had kicked the victim and had him pinned on the floor, the victim tried to reach into his pocket, evoking a fear in the defendant that the victim was armed with "a little old pistol" that he often carried. The defendant then found not a pistol but a knife in the victim's pocket. The defendant used this knife to "poke" the victim.

The defendant testified, "At first, there was some [blood] on [the victim's] back, up where I punched him with the – stuck him with the knife." The defendant testified that the "Tony" who then came into the house was Tony Knight. The defendant testified that he wanted to get into the victim's safe to retrieve his mother's records in an effort to facilitate her filing for bankruptcy. The defendant said that, when he came back from the bedroom with the safe, the victim was bleeding "lots more." He testified that he only stabbed the victim three times and maintained that he did not inflict the other 12 stab wounds. "I couldn't have done nobody like that," he testified.

On cross-examination, the defendant admitted that, following his arrest, he had failed to identify Tony Knight from a photographic array as the man who entered the victim's house on March 31, 2004. He attributed his failure to select Tony Knight's picture to the black-and-white motif of the photograph.

The defendant expressed his motivation for taking the victim's billfold: "I just kind of went off and took his billfold and showed him I could be able to rule, too, show him I had a little power. He was doing me dirty, and I figured I'd just do him dirty back."

The defendant then offered as a witness a clinical psychologist with specialties in clinical neuropsychology and forensic psychology who testified that the defendant had a intelligence quotient of 67, placing him in the mildly retarded range of intellectual functioning. The psychologist also testified that the defendant was schizophrenic and evinced a mixed personality disorder with

passive-aggressive, dependent, and depressive features. The witness opined that, due to his disorders and intellectual limitations, the defendant had mis-perceived the victim's actions on March 31, 2004, "and so completely acted in a way that none of the others of us would."

Based upon the evidence as summarized above, the jury convicted the defendant of first degree murder committed in the perpetration of theft in count one and of misdemeanor theft of property valued at $500 or less in count two.[1]

I. Sufficiency of the Evidence of First Degree Murder

In his challenges to the sufficiency of the evidence of first degree murder,[2] the defendant focuses upon the timing of the lethal assaults inflicted upon the victim *vis a vis* his decision to take the victim's property. He argues that the theft was an "afterthought" and that he had not contemplated theft when, out of anger and fear, he stabbed the victim.

A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict because a guilty verdict destroys the presumption of innocence and replaces it with a presumption of guilt. *See State v. Evans*, 108 S.W.3d 231, 237 (Tenn. 2003); *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). This court must reject a defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *State v. Hall*, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. *See Carruthers*, 35 S.W.3d at 558; *Hall*, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. *See State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). Issues of the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this court will not re-weigh or re-evaluate the evidence. *See Evans*, 108 S.W.3d at 236; *Bland*, 958 S.W.2d at 659. Nor will this court substitute its own inferences drawn from

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[1] Because the State had failed to prove the value of the personalty the defendant removed from the victim's house, the trial court, in count two, essentially directed acquittals to all grades of theft except for the lowest grade, a Class A misdemeanor for theft of property valued at $500 or less. *See* T.C.A. § 39-14-105(1) (2006).

[2] Courts often use the phrase "felony murder" to describe the form of first degree murder proscribed in Tennessee Code Annotated section 39-13-202(a)(2). Such a homicide is not predicated upon a culpable mental state of premeditation, *see* T.C.A. §39-13-202(a)(1), but rather upon the defendant's perpetration or attempt to perpetrate certain other offenses. Although these offenses at one time were all felonies, the listing now includes "theft," which as we have stated, may be a misdemeanor. *State v. Mila Love*, No. W1999-01957-CCA-R3-CD, slip op. at 2 n. 2 (Tenn. Crim. App., Jackson, Aug. 17, 2001) ("We note the fact that the term 'felony murder' is a misnomer in that one may be convicted of first degree murder in the perpetration of or attempt to perpetrate misdemeanor theft.").

circumstantial evidence for those drawn by the trier of fact. *See Evans*, 108 S.W.3d at 236-37; *Carruthers*, 35 S.W.3d at 557.

As applicable in the present case, first degree murder is a "killing of another committed in the perpetration of or attempt to perpetrate any . . . theft." T.C.A. § 39-13-202(a)(2) (2006). "A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." *Id.* § 39-14-103.

The evidence in the present case, in the light most favorable to the State, showed that the defendant entered the victim's home, the two men struggled, the defendant struck the victim with a candleholder, and then he took the victim's knife and stabbed him. The defendant admitted stabbing the victim in the back. Some of the stabs in the defendant's back cut blood vessels in the victim's lungs, and other stabs cut blood vessels in his liver and neck. The wounds resulted in the victim's bleeding to death. The defendant testified that, during the struggle but before he began stabbing the victim, he removed items from the victim's pockets, including a billfold, keys, and the knife. Following the stabbing and beating of the victim, the defendant left him bleeding but alive and went into the bedroom to get the victim's safe. With the victim still alive, the defendant loaded the safe, the victim's personal effects, and a basket of pill bottles in his car and drove away.

As mentioned, the primary thrust of the defendant's challenge to his first degree murder conviction is that the State failed to prove that the homicide was "in the perpetration of" or the "attempt to perpetrate" a theft.

In *State v. Buggs*, 995 S.W.2d 102 (Tenn. 1999), a felony murder case, the defendant stabbed his girlfriend to death after he "snapped" during an argument. *Id.* at 104. Afterward, he stole the victim's cash and used it to purchase cocaine. *Id*. Despite Buggs's characterization of the decision to steal the money as an "afterthought," *id.* at 103, our supreme court held that the evidence was sufficient to convict Buggs of felony murder committed in the perpetration of a robbery.

The supreme court first concluded that existing Tennessee law did not require that the commission of the predicate felony necessarily precede the murder to support a felony murder conviction. "The killing may precede, coincide with, or follow the felony and still be considered as occurring 'in the perpetration of' the felony offense, so long as there is a connection in time, place, and continuity of action." *Id*. at 106. "[I]n a felony-murder case, intent to commit the underlying felony must exist prior to or concurrent with the commission of the act causing the death of the victim." *Id*. at 107. In terms of proving such intent, however, the supreme court stated "that a jury may reasonably infer from a defendant's actions immediately after a killing that the defendant had the intent to commit the felony prior to, or concurrent with, the killing." *Id.* at 108. "The question thus becomes whether a rational trier of fact could reasonably infer from the evidence presented that the defendant intended to commit the theft prior to, or concurrently with, the fatal assault." *See State v. Jeffrey Hopkins*, No. W2004-02384-CCA-R3-CD, slip op. at 16 (Tenn. Crim. App., Jackson, Sept. 23, 2005), *perm. app. denied* (Tenn. 2006).

In the present case, the jury could have reasonably inferred that the defendant formed the intent to steal from the victim prior to committing the homicide. The defendant went to the victim's house with only two dollars and spent that purchasing Valium. The defendant expressed frustration with the victim's refusal to provide medication for the defendant's mother. Although the defendant's pretrial statement indicated that the struggle with the victim began as the victim appeared to be reaching into his pocket as he came out of his chair, the defendant testified at trial that he kicked the victim and jumped upon him on the floor before the victim made movements toward his pocket. From the victim's pocket, the defendant pulled keys, a knife, and a billfold that, according to the evidence, contained cash. The defendant used a candleholder and a staple gun to beat the victim on the head, back, and neck. The victim told the defendant that he had cash in his safe in the bedroom. The defendant testified at trial that, at one point, he became angry because the victim would not tell him the combination to the safe. As the victim continued to struggle, the defendant used the knife to stab the victim. With the victim prone and bleeding, the defendant went to another room, retrieved the victim's safe, collected the victim's personalty and cache of prescription medications, and left the house.

Thus, following the well-settled rules governing our review of the sufficiency of the convicting evidence, we affirm the defendant's first degree murder conviction.

II. Admission of Multiple Photographs of the Victim's Body

The defendant next claims that the trial court allowed the State to admit into evidence too many photographs of the victim's body *in situ*. Prior to trial, the State prepared an anthology of over 200 proposed exhibits. The defendant objected to the admission of the pictures of the victim's body, arguing that "once the scene has been properly displayed, the photographs become repetitive, not probative, immaterial, and irrelevant." The trial court conducted a pretrial hearing in which it reviewed each proposed photographic exhibit by number, stated its rationale for admitting or excluding each photograph, and ultimately admitted some photographs and excluded others. Some of the admitted photographs were shown to the jury – apparently using a document camera or other means of projecting the images onto a screen – two or three times. Law enforcement officers introduced the photographs, and the medical examiner's testimony included display of some of the same photographs. In his brief, the defendant claims that the process of re-showing the photographs of the victim's body was repetitive, unnecessary, and prejudicial.

In determining whether photographs should be admitted, the trial court must determine, first, whether the photograph is relevant. Tenn. R. Evid. 401; *State v. Banks*, 564 S.W.2d 947, 949 (Tenn. 1978). Photographs are not necessarily rendered inadmissible because they are cumulative of other evidence or because descriptive words could be used. *See Collins v. State*, 506 S.W.2d 179, 185 (Tenn. Crim. App. 1973). Photographs offered by the prosecution must be relevant to prove some part of the prosecution's case and must not be admitted solely to inflame the jury and prejudice it against the defendant. *Banks*, 564 S.W.2d at 951; *see* Tenn. R. Evid. 403 (relevant evidence may be admitted if its probative value is not "substantially outweighed by the danger of

unfair prejudice"). On appeal, the trial court's decision to admit photographs is reviewable for abuse of discretion. *Banks*, 564 S.W.2d at 949.

In the present case, the trial judge specifically referred to the *Banks* standards in determining the admissibility of the photographs. The record reflects that the judge patiently reviewed each of 214 proposed exhibits and made findings about the admissibility of each. Some photographs were rejected by the trial court. Although the State placed a large number of photographs into evidence, upon our review, we cannot say that the trial court abused its discretion in admitting these photographs.

III. Denial of Motions to Suppress

The defendant claims that the trial court erroneously denied his pretrial motions to suppress both the fruits of the search of the defendant's residence and his pretrial written statement.

When evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, the court on appeal must uphold the trial court's findings of fact unless the evidence preponderates otherwise. *See State v. Ross*, 49 S.W.3d 833, 839 (Tenn. 2001); *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). In reviewing these factual findings, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Odom*, 928 S.W.2d at 23. As such, "[t]he prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). Our review of a trial court's application of law to the facts, however, is conducted under a de novo standard of review. *See Ross*, 49 S.W.3d at 839; *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001).

A. Search and Seizure

The defendant bases his challenge to the seizure of evidence from his residence upon his claim that he imperfectly consented to the search and seizure. He argues that a search warrant could have been easily obtained, that no exigent circumstances existed, and that he could not have been "expected to perform at a level of an individual who has secured a reasonable education and maintain[ed] an average IQ."

The trial court, after a pretrial hearing, determined that the defendant's written consent to search his residence was freely, knowingly, and understandingly given. The court found that, in his pretrial statement given just prior to consenting to the search, the defendant had articulated details about the events of that day and that he had spoken spontaneously and deliberately. The court found that the consent to search was fully explained to the defendant.

Evidence showed that the defendant accompanied the officers to his home and pointed out the items that he had taken from the victim's house.

"According to both the Fourth Amendment and [A]rticle I, § 7 of the Tennessee Constitution, 'a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.'" *See State v. Randolph*, 74 S.W.3d 330, 334 (Tenn. 2002). It is well settled that a search conducted pursuant to a voluntary consent is an exception to the warrant requirement. *State v. Bartram*, 925 S.W.2d 227, 230 (Tenn. 1996) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041 (1973)).

"[T]o pass constitutional muster, consent to search must be unequivocal, specific, intelligently given, and uncontaminated by duress or coercion." *State v. Brown*, 836 S.W.2d 530, 547 (Tenn. 1992). The question whether the defendant voluntarily consented to the search is a question of fact which focuses upon the totality of the circumstances. *Schneckloth*, 412 U.S. at 227, 93 S. Ct. 2047-48. The following factors are used to evaluate the voluntariness of the consent: (1) whether the defendant is in custody; (2) the length of detention prior to the giving of consent; (3) the presence of coercive police procedures; (4) the defendant's awareness of the right to refuse to consent; (5) the defendant's age, education, and intelligence; (6) whether the defendant understands his constitutional rights; (7) the extent of the defendant's prior experience with law enforcement; and (8) whether the defendant was injured, intoxicated, or in ill health. *See*, *e.g.*, *State v. Carter*, 16 S.W.3d 762, 769 (Tenn. 2000). Moreover, the State must show "more than acquiescence to a claim of lawful authority." *Bumper v. North Carolina*, 391 U.S. 543, 549, 88 S. Ct. 1788, 1792 (1968). The burden of proof rests upon the State to show, by a preponderance of the evidence, that the consent to a warrantless search was given freely and voluntarily. *Id.* at 548, 88 S. Ct. at 1792.

In the present case, despite the evidence of the defendant's mental disorders, no evidence really contradicts the trial court's finding that the defendant freely and knowingly consented to the search of his home. Accordingly, we hold that the trial court did not err in denying the motion to suppress the evidence seized from the defendant's home.

B. Pretrial Statement

The defendant argues that he was not mentally capable of waiving his right to avoid self-incrimination and to have the assistance of counsel when he gave his statement to the Hawkins County Sheriff's Department on March 31, 2004. He points to a psychological evaluation that reported that the defendant was not competent to proceed to trial in September 2005, although the same examiner opined that he was "ready to go to trial" in February 2006. The defendant also stresses the psychological testimony presented at trial showing that he was schizophrenic; dependent upon marijuana; afflicted with a mixed personality disorder with passive-aggressive, dependent, and depressive features; and functioning at a borderline intellectual level.

A confession must be free and voluntary, and it must neither be extracted by any sort of threats or violence nor obtained by any direct or implied promises, nor by the exertion of any improper influence or police overreaching. *Bram v. United States*, 168 U.S. 532, 18 S. Ct. 183

(1897). The issue of voluntariness requires the trial judge to focus on whether the accused's will to resist making a confession was overborne. *State v. Kelly*, 603 S.W.2d 726, 728 (Tenn. 1980). At an evidentiary hearing, the State has the burden of demonstrating by a preponderance of the evidence that the defendant's statements were voluntary, knowing, and intelligent. *Id*. at 728.

Also, the Fifth Amendment right to counsel attaches during custodial interrogation. *Edwards v. Arizona*, 451 U.S. 477, 481-82, 101 S. Ct. 1880, 1883-84 (1981). If a defendant requests counsel while being given his warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612 (1966), or during custodial interrogation, the interrogation must cease. *Edwards*, 451 U.S. at 482, 101 S. Ct. at 1883.

In determining whether *Miranda* warnings are required, the court must look to whether the defendant was "in custody" at the time he made the incriminating statement. *State v. Anderson*, 937 S.W.2d 851, 853 (Tenn. 1996). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612. A person is in custody within the meaning of *Miranda* if there has been "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 3520 (1983) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 714 (1977)). An assessment whether the defendant was in custody for *Miranda* purposes is based upon the totality of the circumstances. *Anderson*, 937 S.W.2d at 855.

Before a defendant can knowingly and voluntarily waive his *Miranda* rights, the defendant must be "adequately and effectively apprised of his rights." *Middlebrooks*, 840 S.W.2d 317, 326 (Tenn. 1992). If the waiver is made "voluntarily, knowingly and intelligently," a defendant may waive his rights. *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612. The State has the burden of proving the waiver by a preponderance of the evidence at the hearing on the motion to suppress. *State v. Bush*, 942 S.W.2d 489, 500 (Tenn. 1997). In determining whether a defendant has validly waived his *Miranda* rights, courts look to the totality of the circumstances. *Middlebrooks*, 840 S.W.2d at 326.

As noted above, the trial court in the present case conducted a pretrial hearing and determined that the defendant demonstrated an ability to articulate the details of the encounter with the victim and to do so spontaneously and deliberately. An officer, who had known the defendant for several years, opined that the defendant seemed "normal" during the March 31 interview at the sheriff's office. The officer testified that he would not have thought of the defendant as retarded; the defendant had on prior occasions served as a "snitch" in drug cases and, on one occasion, had shown the officer how to use a computer. Captain Ronnie Lawson testified that he fully read to the defendant the printed admonition and waiver of "*Miranda*" rights and that the defendant signed the waiver. The defendant seemed "fine," and neither his appearance nor his demeanor caused "any concern." Captain Lawson testified that no coercion was applied. He testified that the defendant did not want his statement to be recorded on tape but was willing for the captain to write it in

longhand. The captain did that and reviewed the product with the defendant, who signed the statement. The process of interviewing, writing, and signing took about two hours.

The trial court determined that the defendant waived his Fifth Amendment rights and gave the statement voluntarily and knowingly. The record supports this determination, even assuming *arguendo* that the defendant was in custody when he made the incriminating statements. The defendant was 45 years old and had experience, via drug cases, in dealing with the police. Despite his mental disorders, he communicated well with others, and neither his appearance nor his demeanor suggested mental retardation. He had demonstrated facility in operating a computer and caring for his mother and young child, and his pretrial statement itself was articulate and detailed, as the trial court found. He appeared "normal" to an officer who knew him well. Medications found in the defendant's system on March 31, 2004, were prescribed and were within low therapeutic limits; nothing in the record suggests that the defendant was chemically impaired at the time he gave his statement. The defendant's mode of cooperation with the officers continued not only throughout the completion of the statement but through a trip to and search of the defendant's home, as well.

Thus, we hold that the trial court did not err in denying the motion to suppress the pretrial statement.

IV. Sentencing: Life without Parole

In his final issue, the defendant argues that the record does not support the jury's decision to impose a sentence that denies him the possibility of parole.

After returning a verdict of guilty of first degree murder, the jury heard additional proof, deliberated, and then determined that the defendant's sentence should be life without the possibility of parole based upon the finding of one aggravating factor, that the homicide was "especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death." *See* T.C.A. § 39-13-204(i)(5) (2006).

The defendant claims on appeal that the use of the "(i)(5)" aggravating factor to support a sentence of life without the possibility of parole is unsupported in the record and "amounts to double enhancement and should not have formed the basis for [the] sentence." He argues that the medical evidence showed that the victim bled to death from a combination of wounds following a fight. Also, he claims, "if the State's theory that the violence in this case was directly connected to the theft [that was] used to sustain a felony murder conviction[,] it is double enhancement to use the same violence to support a sentence of life without the possibility of parole."

When a defendant is convicted of first degree murder and the State does not seek the death penalty, the defendant shall be sentenced to a life in prison. *Id.* § 39-13-204(a), (f). The jury may determine that the life sentence shall be served with no possibility of parole if it finds unanimously and beyond a reasonable doubt that at least one statutory aggravating circumstance exists and prevails over mitigating circumstances. *Id.* § 39-13-204(I). The "especially heinous,

atrocious, or cruel" factor, relied upon by the State and found by the jury in the present case, is one such aggravating circumstance. *Id.* § 39-13-204(i)(5).

Our supreme court has defined "torture" as "the infliction of severe physical or mental pain upon the victim while he or she remains alive and conscious." *State v. Pike*, 978 S.W.2d 904, 917 (Tenn. 1998); *State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985). With respect to "serious physical abuse beyond that necessary to produce death," we have previously explained that "serious" alludes to a matter of degree and that physical, rather than mental, abuse must be "beyond that" or more than what is "necessary to produce death." *See State v. Nesbit*, 978 S.W.2d 872, 887 (Tenn. 1998). "The (i)(5) aggravating circumstance may be applied if the evidence is sufficient to support either torture or serious physical abuse beyond that necessary to produce death." *State v. Rollins,*188 S.W.3d 553, 572 (Tenn. 2006), *State v. Suttles*, 30 S.W.3d 252, 262 (Tenn. 2000).

We view the sufficiency of the evidence for an aggravating circumstance under the standards of *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979). Thus, we determine whether, after viewing the evidence in a light most favorable to the State, a rational trier of fact could find the aggravating circumstance beyond a reasonable doubt. *See State v. Williams*, 690 S.W.2d 517, 530 (Tenn. 1985). In recognition of the substantial discretion afforded jurors in determining which sentence to impose, the statute governing appellate review declares that a sentence of life in prison without possibility of parole shall be considered appropriate if the State proved beyond a reasonable doubt at least one statutory aggravating circumstance contained in Code section 39-13-204(i) and the sentence was not otherwise imposed arbitrarily so as to constitute a gross abuse of the jury's discretion. T.C.A. § 39-13-207(g) (2006).

In the present case, the record does not establish – and the State does not claim – that the victim suffered pain while still alive and conscious so as to form a basis for a finding of torture. However, we hold that the record supports a finding of serious physical abuse of the victim beyond that necessary to produce death. The evidence showed that the defendant beat the victim about the head with a candleholder and a staple gun. Then he stabbed the victim 15 times. *See Rollins*, 188 S.W.3d at 572 ("The prosecution offered proof that the defendant inflicted more than twenty non-fatal stab wounds to the victim's body. This proof is sufficient to support a finding that the murder involved serious physical abuse beyond that necessary to produce death."). The jury could have reasonably inferred from the medical evidence that, although several stab wounds contributed to the exsanguination of the victim, not all of the wounds were necessary to produce death.

Accordingly, the sentence of life without the possibility of parole is supported in the record.

V. Conclusion

In light of the foregoing analyses, we affirm the convictions and sentence.

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JAMES CURWOOD WITT, JR., JUDGE